IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.72 OF 2004

Commissioner, Sangli Miraj & Kupwad
Cities Municipal Corporation. ...Applicant

Versus

The Executive Engineer,
P.W.D Miraj. ...Respondent

Shri N.V.Walawalkar, Sr.Counsel for the Applicant.
Shri A.R.Patil, A.G.P for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 16, 2007.

P.C.:

1. Heard learned senior counsel appearing for the Petitioner and the learned A.G.P for the Respondent. By this Revision Application under section 115 of the Code of Civil Procedure, 1908, the Petitioner-original Defendant has taken exception to the Judgment and Order dated 03rd March, 2004 passed by the learned Civil Judge Senior Division at Sangli. The Respondent-Plaintiff filed a suit for injunction restraining the Petitioner-Defendant from recovering property tax. In the said suit, an Application for temporary injunction was made by the Respondent. The Petitioner applied under section 9A of the Code of Civil Procedure, 1908 praying for framing preliminary issue as regards jurisdiction of the trial Court to entertain and try the suit. The order impugned has been passed on the

preliminary issue holding that the trial Court has jurisdiction. I have heard the submissions of the counsel appearing for the parties. It is not in dispute that preliminary issue was framed on the basis of an Application made by the Petitioner under section 9A of the said Code. The Application was made at a stage when issues under Order XIV of the said Code were not framed. In view of the decision of the learned single Judge of this Court in the case of Solapur Urban Co operative Bank Vs. Nigam A. M Beskar [2006(4) Bombay Case Reporter Page 217] after coming into force of the Code of Civil Procedure (Amendment) 2002, the Application under section 9A of the said Code could not have been entertained as after coming into force of the said amendment Act section 9A stands repealed. A reference has been made to a larger bench on this aspect. However as of today the said Judgment is operative.

2. It is brought to my notice that now the suit is ready for final hearing. Considering the legal position as it exists today, there was no occasion for the trial Court to frame a preliminary issue in the facts and circumstances of the case. Therefore, the trial Court could not have decided the preliminary issue at the stage at which it has been decided in the present case. Therefore, impugned order will have to be set aside only

on the ground that there was no occasion to frame preliminary issue. The issue of jurisdiction can be decided alongwith the other issues.

3. Now the suit is ready for hearing. The issue of jurisdiction is already raised by the Petitioner. If issue of jurisdiction is not framed, the trial Court can always frame the issue of jurisdiction and decide the same alongwith other issues.

4. Hence, Revision Application is disposed of by passing following order:

(i) The impugned Judgment and Order dated 03rd March, 2004 is quashed and set aside. However, the issue of jurisdiction is kept open.

(ii) If issue as regards jurisdiction is not framed by the trial Court, the same shall be framed by the trial Court. After issue of jurisdiction is framed, the trial Court will permit the parties to lead additional evidence, if parties so desire. If some witnesses are already examined, it will be open for the parties to apply for recalling the said witnesses.

(iii) The issue of jurisdiction shall be decided by the trial Court alongwith other issues arising in the suit.

(iv) All contentions of the parties on merits of the case are expressly kept open.

(v) Revision Application is partly allowed in above terms with no orders as to costs.

JUDGE